

## REMARKS AND ARGUMENTS

### **§112**

The examiner has rejected claim 3 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the examiner suggests that "a plurality/rigid supports" is vague and ambiguous, but applicant notes that this issue was taken care of principally by amendment to claim 3 filed on or about July 24, 2000, wherein the word "of" was inserted after "plurality". The amendment herein to claim 3 removes the forward slash. The phrase now reads clearly "plurality of rigid supports", not "plurality/of rigid supports."

The examiner has made the same §112 objection to claim 5, but claim 5 has been amended, above, to depend on claim 4, not claim 2, so that there exists antecedent basis, particularly when adding the word "belt" as indicated.

This should resolve the §112 rejections.

### **§102(b)**

The examiner has rejected claims 1-3, 6 and 7 as being anticipated under §102(b). In so doing, examiner cites Crandell as disclosing certain elements of the claims, but applicant respectfully shows that not all elements of Crandell are present in applicant's claims. Inasmuch as anticipation requires the presence in a single prior art reference of all of the elements

of the subject claim, in accordance with case citations in applicant's prior Remarks, applicant suggests that Crandell does not in fact anticipate.

In particular, claim 1 requires swim jets that provide enough resistance to allow one to swim in place (a significant force) whereas Crandell doesn't address swimming in place nor is it capable of accomplishing it there. In fact, Crandell is not directed toward swimming at all as he shows a limited hydrotherapy exercise device for use for walking in place. Moreover, Crandell does not disclose a cavity for the treadmill with a flush safety step off ledge (an important feature should one need to quickly exit). Anticipation also requires not only every element of the claim be present, but also requires the entire combination of all elements.

Applicant would also suggest that Crandell does not disclose a seamless device and in fact suggest stainless steel or other materials not seamless, and never suggest seamlessness. Unlike the applicant's structure, it would be difficult to construct Crandell in one piece.

Inasmuch as claim 1 is not anticipated by Crandell, then Claim 2, even narrower, is not anticipated. Indeed, claim 2 provides for impact reducing means, clearly not disclosed by Crandell. Although the examiner suggests that the water itself in Crandell constitutes the impact reducing means, it is important to note that applicant's claim two requires that the treadmill

*itself* have impact reducing means. Nothing in Crandell discloses such, inasmuch as the water is not part of the treadmill.

Claim 3 adds a limitation of specific belt structure and connection not disclosed by Crandell. In particular, Crandell does not disclose "... a plurality of individual energy absorption means supporting each of the treadmill rigid supports at the sides.

Claim 4 provides for belt adjustment means capable of being adjusted from the top, also not disclosed in Crandell.

Claim 6 adds a plate "for covering the treadmill frame and a portion of the step off ledge". No such plate that covers the frame and the step off ledge is disclosed in Crandell. Crandell doesn't even have a step off ledge to cover, as indicated above regarding claim 1 and below in claim 7.

Likewise, an important element of claim 7 is "jets at the front end of the enclosure and having means for providing sufficiently powerful water flow from the front to the back of the enclosure so as to provide sufficient resistance to allow swimming in place". Again, Crandell says nothing about waterflow from jets sufficient to allow swimming in place, and in fact does not deal with swimming. Neither does Crandell have "A treadmill receiving cavity at the bottom having a depth approximately the height of the treadmill and having a safety step off area adjacent the treadmill." (Applicant's claim 7). There simply is no step off area in Crandell adjacent the treadmill, only a

substantial step up, a significant difference affecting safety and convenience. Also, there is no cavity at the bottom having a depth approximately equal to the height of the treadmill. It simply doesn't exist there. In fact, Crandell cannot show both a cavity at the level of the treadmill and also a step off area at the same time. They are essentially mutually exclusive in Crandell. Applicant suggests that Crandell has neither the cavity with the depth approximately that of the treadmill, nor the step off area. Consequently claim 7 is not anticipated.

However, that said, applicant has, with this amendment to claim 7, added a still additional element to claim 7, that the swim jets be located in the top half of the tank. Clearly this additional distinction, as well as the swim jet requirement and the requirement that there be a safety step off ledge, and a cavity near the height of the treadmill, combined with the fact that Crandell teaches away from a swim usage and capability, suggests that Crandell does not anticipate.

Claim 8 is new, and has the added requirement that the swim jets be in the top half, but does not have the specific cavity requirements.

#### **§103(a)**

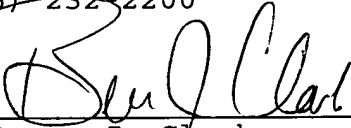
The examiner rejected claim 4 under §103(a) as being obvious, combining the treadmill belt adjustment means of Sampson with the (suggested) identical remaining features of Crandell.

**CERTIFICATE OF MAILING**

The undersigned, Bruce J. Clark, hereby certifies that this Amendment and Response to Office Action was deposited with the U.S. Postal Service by First Class mail, addressed to the Commissioner for Patents, P.O. Box 1450, Arlington, Virginia 22313-1450, in accordance with 37 CFR 1.8(a), a filing date of Monday, February 27, 2006, is requested as the date of filing of this document.

WRIGHT, HENSON, CLARK, HUTTON, MUDRICK and  
GRAGSON, LLP  
Commerce Bank Building Downtown, 2nd Floor  
100 E. 9th Street, P. O. Box 3555  
Topeka, Kansas 66601-3555  
(785) 232-2200

Date: 2/27/06

By   
Bruce J. Clark  
Registration No. 31,339

However, as indicated above, claim 1 via claim 4 is not identical and is different in several respects noted above. The combination of Crandell and Sampson is still several elements short of claim 4 by virtue of the different claim 1 elements alone. Moreover, Sampson does not suggest belt adjustment means of claim 4 being adjustable from the top as indicated, which further overcomes the 103(a) objection, particularly given the remaining omissions in the citations of parts of claim 1.

As indicated previously, Crandell does not teach a seamless compact, personal multi exercise device, that includes swimming in place with powerful jets along with the capability of walking and running, i.e. the combination of all, and in fact teaches otherwise in the form of a walking/jogging unit.

For all the reasons set forth above, and with the amendments, applicant suggests that the application should be passed for issuance, and respectfully requests the examiner reconsider the rejection.

WRIGHT, HENSON, CLARK, HUTTON,  
MUDRICK & GRAGSON, LLP  
Commerce Bank Building Downtown, 2nd Floor  
100 E. 9th Street, P. O. Box 3555  
Topeka, Kansas 66601-3555  
(785) 232-2200

Date: 2/27/06

By Bruce J. Clark  
Bruce J. Clark  
Registration No. 31,339